

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TONY WARBINGTON and,)	
CLARA WARBINGTON,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE
)	NO: 1:11-cv-1857-CC
WAL-MART STORES, INC.,)	
)	
Defendant.)	

DEFENDANT WAL-MART STORES, INC.'S
MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant Wal-Mart Stores, Inc., improperly named and joined (hereinafter "Defendant"), and pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, hereby moves this Court to enter a summary judgment in Defendant's favor, and in support thereof, shows the Court the following:

1.

Defendant shows that there is no genuine issue as to any material fact, and that Defendant is entitled to judgment in its favor as a matter of law.

2.

In support of its Motion for Summary Judgment, Defendant relies upon the

following:

- a. Plaintiff's Complaint and Defendant's Answer;
- b. Defendant's Statement of Material Facts and Brief in Support of its Motion for Summary Judgment;
- c. Deposition of Tony James Warbington taken on October 24, 2011, and all accompanying Exhibits thereto, the original of which is being filed with the Court;
- d. Affidavit of Store Co-Manager Souphanh Funkhouser, attached hereto as Exhibit "A";
- f. Affidavit of Ryan Nienhusser, attached hereto as Exhibit "B";
- g. Affidavit of Michael "Travis" Dutton, attached hereto as Exhibit "C", with video, manually filed under seal; and
- h. All other competent and admissible evidence timely made a part of the record.

WHEREFORE, Defendant respectfully requests that the Court inquire into and grant its Motion for Summary Judgment.

- signature page follows -

This 2nd day of December, 2011.

McLAIN & MERRITT, P.C.

/s/ Albert J. DeCusati
Albert J. DeCusati
Georgia Bar No. 215610
Ashley A. Bagiatis
Georgia Bar No. 141360
Attorney for Defendant

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Pursuant to Local Rules 5.1 and 7.1 and , counsel for the Defendant certifies that the document has been prepared in Times New Roman, 14 point font, and that the document does not contain more than 10 characters per inch of type.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the within and foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED AND THEORY OF RECOVERY, AND DEFENDANT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** upon counsel for all parties by depositing same in the United States Mail in envelopes with sufficient postage affixed thereon to insure delivery addressed as follows:

Earnest Redwine, Jr., Esq.
The Law Offices of Earnest Redwine, Jr., LLC
730 Peachtree Street
Suite 560
Atlanta, Georgia 30308

This 2nd day of December, 2011.

McLAIN & MERRITT, P.C.

/s/ Albert J. DeCusati
Albert J. DeCusati
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